

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
05-CR-231A

ANN CAIN,

Defendant.

On September 14, 2006, defendant Ann Cain was convicted by a jury of one count of knowingly attempting to corruptly persuade a witness in violation of 18 U.S.C. § 1512(b)(3). She filed a motion for judgment of acquittal pursuant to Rule 29, and a motion for a new trial pursuant to Rule 33. On January 10, 2007, this Court issued a decision and order denying the motions for judgment of acquittal and for a new trial.

Defendant Cain is scheduled to be sentenced on March 2, 2009. On January 29, 2009, the defendant filed a motion for "reconsideration" of her earlier Rule 20 and Rule 33 motions. The motion was filed pro se despite the fact that the defendant is represented by counsel. On February 3, 2009, the government filed a response in opposition to the motion for reconsideration.

The motion for reconsideration is denied. To the extent that the motion raises new issues not previously raised in her initial Rule 29 and Rule 33 motions, the motion is untimely. Both Rules 29 and 33 provide that motions for a judgment of acquittal and for a new trial must be made within 7 days after the verdict. A motion for

a new trial grounded on newly discovered evidence may be “filed within 3 years after the verdict or finding of guilty .” Rule 33(b)(1). However, the defendant has not pointed to any newly discovered evidence that would warrant granting an extension of the 7-day period set forth in the Rules. The time for filing her motions has long passed.

To the extent that the defendant asks this Court to reconsider its earlier ruling, the motion is denied on the merits. The defendant’s initial Rule 29 and Rule 33 motions were thoroughly considered but rejected in January 2007. The Court finds nothing in the pending motion that would cause it to reconsider or alter its prior ruling. Moreover, the request for reconsideration itself is untimely as it was filed more than two years after this Court’s January 2007 decision and order.

Therefore, the motion is denied. The defendant shall appear for sentencing as scheduled on March 2, 2009.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: February 12, 2009